THE HON'BLE MR JUSTICE E. DHARMA RAO

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WRIT PETITION NO. 18601 of 2005

O R D E R :

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The Petitioner seeks a writ of mandamus declaring the action of the 1st respondent and his agents, dated 16-08-2005 orally asking the petitioner to hand over the original documents and the premises bearing No. 7-1-644/4, situated at B.K.Guda, Erragadda, Hyderabad and to vacate the premises by 26-08-2005, as illegal, void in contravention of Section 146 and 147 of Hyderabad Municipal Corporation Act and the law laid down by this Hon'ble Court in W.P.No. 12297/2005, dated 16-6-2005 and to restrain the respondents from demolishing the petitioner's premises bearing No. 7-1-644/4 situated at B.K.Guda, Erragadda, Hyderabad without following due process of law and for a consequential direction to the respondents not to ask for vacation of the petitioner's property referred to supra, except in accordance with law.

When the matter came up for hearing, the learned counsel appearing on either side submits that the point raised in this writ petition is decided by a Division Bench decision of this Court in ***PILLI LAKSHMANA RAO vs. EXECUTIVE OFFICER (DB) (2000 (5) ALT 246 (DB)*** and therefore this writ petition may be disposed of in terms thereof. The said Division Bench judgment of this Court reads as follows:

> *"Though this writ petition and many other writ petitions are premature, as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see*

that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.

When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements.

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If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to show cause as to why the proposed action shall not be taken. On receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self-government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take

appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, status quo obtaining as on today shall continue"

Following the above decision of the Division Bench of this Court and for the same reasons the respondents are directed to follow due process of law by issuing notice to the petitioner before taking any steps to acquire the property of the petitioner referred to supra.

Accordingly, the writ petition is disposed of at the admission stage in terms of the judgment of the Division Bench of this Court referred to supra. The respondents are directed to comply with the guidelines issued in the Division Bench decision of

this Court referred to supra in accordance with law. However, there shall be no order as to costs.

23rd August, 2005

BJ/

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH :AT HYDERABAD.

The Hon'ble Sri Justice E. Dharma Rao

W.P.No. 18601 of 2005

Dated:P 23rd August, 2005

Between:

Mohd. Abdul Khader …Petitioner

And

The Assistant City Planner, Circle No.5,

Municipal Corporation of Hyd. & Ors. …Respondents.